



The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Jane Stanley  
603 West Main Street  
Tilton, NH 03276

Richard Stanley  
P.O. Box 125  
Tilton, NH 03276

Porter Paving, Inc.  
P.O. Box 125  
Tilton, NH 03276

Re: 603 West Main Street, Tilton, NH

**ADMINISTRATIVE ORDER**  
**No. WMD 04-10**

July 12, 2004

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Porter Paving, Inc. pursuant to RSA 149-M:15, I. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Porter Paving, Inc. ("PPI") is a New Hampshire corporation having a mailing address of P.O. Box 125, Tilton, NH 03276.
3. Jane Stanley is an individual having a mailing address of 603 West Main Street, Tilton, NH 03276.
4. Richard Porter Stanley is an individual having a mailing address of P.O. Box 125 Tilton, NH 03276.

### C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 149-M, DES regulates the management and disposal of solid waste. Pursuant to RSA 149-M:7, the Commissioner of DES has adopted Env-Wm 100 – 300, 2100 *et seq.* (“Solid Waste Rules”) to implement this program.
2. Jane Stanley is the owner of land at 603 West Main Street, Tilton, NH, more particularly described in a deed recorded in the Belknap County Registry of Deeds at Book 1331, Page 809, and identified on Tilton Tax Map R26 as Lot 28 (“the Site”).
3. Richard Porter Stanley operates his business, PPI, at the Site.
4. On June 13, 2003, DES received a complaint alleging that PPI transported and disposed of cured asphalt, uncured asphalt, tar buckets, and concrete at the Site.
5. On July 1, 2003, DES personnel conducted an inspection of the Site (“Inspection”). The purpose of the inspection was to determine PPI’s compliance status relative to RSA 149-M and the Solid Waste Rules.
6. RSA 149-M:4, XXII defines “solid waste” as “any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material.”
7. RSA 149-M:4, XXI defines “refuse” in part, as “any waste product ... which is composed wholly or partly of such materials as ... brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance.”
8. Env-Wm 102.42 defines “construction and demolition debris” in part, as “non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks.”
9. During the Inspection, DES personnel observed approximately 20 cubic yards of uncured asphalt, cured asphalt, concrete slabs, gravel, sand, loam, and one black poly bucket. DES personnel also observed a washing machine, a piece of furniture, scrap wood, water hoses, cardboard, and a red poly bucket.
10. The uncured asphalt, black poly bucket, washing machine, furniture, scrap wood, water hoses, cardboard, and a red poly bucket observed by DES personnel at the Site are solid wastes as defined by RSA 149-M:4, XXII.

11. RSA 149-M:4, IX defines a “[solid waste] facility” as “a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste.”

12. The Site constitutes a “solid waste facility” as defined by RSA 149-M:4, IX.

13. Env-Wm 102.116 defines “owner” as “a person who owns a facility or part of a [solid waste] facility.”

14. Jane Stanley is the owner of a solid waste facility.

15. RSA 149-M:9, I states that “No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES].”

16. A review of DES files shows that neither Jane Stanley nor Richard Stanley have applied for or received a permit to operate a solid waste facility at any New Hampshire location.

17. RSA 149-M:9, II states that “It shall be unlawful to transport solid waste to, or to dispose of solid waste at, any facility other than an approved facility.”

18. Solid waste has been transported to and disposed at the Site. This Site is not approved to accept solid waste.

19. As a result of the Inspection, DES issued a Report of Initial Complaint Investigation (“RICI”) dated July 1, 2003, to Richard Stanley, owner of PPI, advising PPI to remove all solid waste to a permitted solid waste facility by August 1, 2003.

20. On April 19, 2004, DES personnel conducted a follow-up inspection of the Site. DES personnel observed no visible signs of compliance with the RICI. DES personnel observed additional solid waste consisting of approximately 24 empty containers (various sizes), fluorescent light fixtures with intact bulbs, linoleum floor covering, a household air cleaner, a wicker shelving unit, two empty 55-gallon drums, galvanized metal overhead door tracks, empty rusted metal buckets of driveway sealer, auto parts, and a toilet.

#### **D. DETERMINATION OF VIOLATIONS**

1. PPI has violated RSA 149-M:9, by operating an unpermitted solid waste facility.

2. PPI has violated RSA 149-M:9, II by transporting solid waste to and disposing solid waste at a permitted solid waste facility.

#### **ORDER**

Based on the above findings, DES hereby orders PPI as follows:

**Immediately** cease operating an unpermitted solid waste facility.

2. **Immediately** cease transporting solid waste to and disposing of solid waste at an unpermitted facility.

3. **By August 6, 2004**, remove all solid waste at the Site to a facility or facilities permitted to accept such wastes.
4. **By August 13, 2004**, forward copies of disposal receipts to DES
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael Galuszka  
NHDES  
80 Glen Road  
Gorham, NH 03581  
Telephone: (603) 466-5389  
e-mail: mgaluszka@des.state.nh.us

#### **F. APPEAL**

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve PPI of the obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

Please note that RSA 149-M provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. PPI remains obligated to comply with all applicable requirements, in particular RSA 149-M. DES will continue to monitor PPI's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is ~~being recorded~~ in the Belknap County Registry of Deeds so as to run with the land.

  
Anthony P. Giunta, P.G., Director  
Waste Management Division

  
Michael P. Nolin, Commissioner  
Department of Environmental Services

DB/FILE  
Gretchen R. Hamel, Legal Unit Administrator  
Anthony P. Giunta, Director WMD  
Public Information Coordinator, DES  
Jennifer Patterson, Sr. Assistant Attorney General  
Town Clerk, Tilton, NH  
Belknap County Registry of Deeds